

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH BARNES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE COCA-COLA CO.,

Defendant.

Case No. 1:22-cv-01511-JLT-EPG

STIPULATED PROTECTIVE ORDER
(ECF No. 31)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: Shall mean all information or material produced for or disclosed in connection with this action to a receiving party that a producing party, including any party to this action and any non-party producing information or material voluntarily or pursuant to a subpoena or a court order in connection with this action, considered to include confidential technical, sales, marketing, financial, or other commercially sensitive information, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the producing party. This information is commercially sensitive for competitive reasons, is likely to cause harm to the competitive position of the producing party, and may involve the sensitive, nonpublic, identifying information of Defendant’s customers. Any CONFIDENTIAL Information obtained by any party from any person pursuant to discovery in this litigation may be used only for purposes of this litigation. Any document or tangible thing containing or including any CONFIDENTIAL Information may be designated as such by the producing party by marking it “CONFIDENTIAL” prior to or within ten (10) business days of the time copies are furnished to the receiving party. All CONFIDENTIAL Information not reduced to documentary, tangible or physical form or which cannot be conveniently designated as set forth in paragraph 2, shall be designated by the producing party by informing the receiving party of the designation in writing, or, if during a reported deposition or court hearing, orally.

The following information is not CONFIDENTIAL Information: (a) Any information that is or, after its disclosure to a receiving party, becomes part of the public domain as a result of publication not involving a violation of this Order or other obligation to maintain the confidentiality of such information; (b) Any information that the receiving party can show was already publicly known prior to the disclosure; and (c) Any information that the receiving party can show by written records was received by it from a source who obtained the information lawfully and under no obligation of confidentiality to the producing party.

2.3 “CONFIDENTIAL—OUTSIDE COUNSEL ONLY”: shall mean all information that

1 constitutes (a) commercially sensitive marketing, financial, sales, web traffic, research and
2 development, or technical, data or information; (b) highly commercially sensitive competitive
3 information, including, without limitation, information obtained from a nonparty pursuant to a current
4 Nondisclosure Agreement (“NDA”); (c) commercially sensitive information or data relating to future
5 products not yet commercially released and/or strategic plans; (d) commercial agreements the
6 disclosure of which is likely to cause harm to the competitive position of the producing party; (e)
7 source code; (f) proprietary technical information; and (g) a trade secret. Documents marked
8 CONFIDENTIAL—OUTSIDE ATTORNEYS’ EYES ONLY, HIGHLY CONFIDENTIAL, or
9 RESTRICTED CONFIDENTIAL shall be treated as if designated CONFIDENTIAL—OUTSIDE
10 COUNSEL ONLY. In determining whether information should be designated as CONFIDENTIAL—
11 OUTSIDE COUNSEL ONLY, each party agrees to use such designation only in good faith.

12 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” and/or
16 “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.”

17 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
18 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
19 transcripts, and tangible things), that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
22 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
23 in this action.

24 2.8 House Counsel: attorneys who are employees of a party to this action. House Counsel
25 does not include Outside Counsel of Record or any other outside counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
27 entity not named as a Party to this action.

28 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action

1 but are retained to represent or advise a party to this action and have appeared in this action on behalf
2 of that party or are affiliated with a law firm which has appeared on behalf of that party.

3 2.11 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
6 in this action.

7 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
8 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
9 or retrieving data in any form or medium) and their employees and subcontractors.

10 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.”

12 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material (as
16 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
17 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
19 However, the protections conferred by this Stipulation and Order do not cover the following
20 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
21 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
22 publication not involving a violation of this Order, including becoming part of the public record
23 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure
24 or obtained by the Receiving Party after the disclosure from a source who obtained the information
25 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
26 Material at trial shall be governed by a separate agreement or order.

27 4. DURATION
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Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

1 affix the legend “CONFIDENTIAL” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” to each
 2 page that contains Protected Material. If only a portion or portions of the material on a page qualifies
 3 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 4 appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or materials available for inspection need
 6 not designate them for protection until after the inspecting Party has indicated which material it would
 7 like copied and produced. During the inspection and before the designation, all of the material made
 8 available for inspection shall be deemed “CONFIDENTIAL.” or “CONFIDENTIAL—OUTSIDE
 9 COUNSEL ONLY.” After the inspecting Party has identified the documents it wants copied and
 10 produced, the Producing Party must determine which documents, or portions thereof, qualify for
 11 protection under this Order. Then, before producing the specified documents, the Producing Party
 12 must affix the “CONFIDENTIAL.” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.” legend
 13 to each page that contains Protected Material. If only a portion or portions of the material on a page
 14 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
 15 by making appropriate markings in the margins).

16 (b) For testimony given in deposition or in other pretrial or trial proceedings, that the
 17 Designating Party identify on the record, before the close of the deposition, hearing, or other
 18 proceeding, all protected testimony.

19 (c) For information produced in some form other than documentary and for any other
 20 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 21 containers in which the information or item is stored the legend “CONFIDENTIAL.” or
 22 “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.” If only a portion or portions of the information
 23 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 24 portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 26 designate qualified information or items does not, standing alone, waive the Designating Party’s right
 27 to secure protection under this Order for such material. Upon timely correction of a designation, the
 28 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with

the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Parties shall follow the procedures set out in this Court's orders, the Local Rules, and the Federal Rules of Civil Procedure, as applicable.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the

categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated

Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” only to those listed in paragraphs 7.2(a), (c), (d), (e), and (g):

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” or “CONFIDENTIAL—OUTSIDE COUNSEL ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be

Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with the Local Rules.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the

1 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
2 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
3 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
4 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
5 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
6 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
7 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
8 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if
9 such materials contain Protected Material. Any such archival copies that contain or constitute
10 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).
11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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13 DATED: March 6, 2023 /s/ Michael D. Roth
14 Attorney for Plaintiff

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16 DATED: March 6, 2023 /s/ Joshua D. Arisohn (as authorized on 03/02/23)
17 Attorney for Defendant
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ [date] in the case of *Barnes v. The Coca Cola Company*, No. 1:22-cv-01511-JLT-EPG. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

ORDER

Upon review, IT IS ORDERED that the parties' stipulation and joint request for entry of protective order (ECF No. 31) is approved.

IT IS SO ORDERED.

Dated: **March 6, 2023**

/s/ Eric P. Shoj
UNITED STATES MAGISTRATE JUDGE